



UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
www.uspto.gov

KENNETH L. TOLAR
2908 HESSMER AVENUE
METAIRIE, LA 70002

COPY MAILED

AUG 24 2007

OFFICE OF PETITIONS

In re Application of
Claude Ray, et al.
Application No. 10/824,827
Filed: April 15, 2004
Attorney Docket No. None

DECISION ON PETITION
UNDER 37 CFR 1.137(b)

This is a decision in response to the petition, filed April 11, 2007, which is being treated as a petition under 37 CFR 1.137(b) to revive the instant nonprovisional application for failure to timely notify the U.S. Patent and Trademark (USPTO) of the filing of an application in a foreign country, or under a multinational treaty that requires publication of applications eighteen months after filing. *See* 37 CFR 1.137(f).

The petition is DISMISSED.

Petitioner states that the instant nonprovisional application is the subject of an application filed in an eighteen-month publication country on March 21, 2005. However, the USPTO was unintentionally not notified of this filing within 45 days subsequent to the filing of the subject application in an eighteen-month publication country.

In view of the above, this application became abandoned pursuant to 35 U.S.C. § 122(b)(2)(B)(iii) and 37 CFR 1.213(c) for failure to timely notify the Office of the filing of an application in a foreign country or under a multilateral international agreement that requires publication of applications 18 months after filing.

A petition to revive an application abandoned pursuant to 35 U.S.C. 122(b)(2)(B)(iii) for failure to notify the USPTO of a foreign filing must be accompanied by:

- (1) the required reply which is met by the notification of such filing in a foreign country or under a multinational treaty;
- (2) the petition fee as set forth in 37 CFR 1.17(m); and
- (3) a statement that the entire delay in filing the required reply from the due date of the reply until the filing of a grantable petition was unintentional.

The petition is found to comply with the above-noted requirements. However, the petition cannot be revived at this time since the application is abandoned for another reason.

A review of the record of this application discloses that a final Office action was mailed April 4, 2006. In response, on October 6, 2006, a Notice of Appeal, including an appropriate 3-month extension of time, was filed using a Certificate of Mailing dated October 3, 2006. Thereafter, on February 6, 2007, an appeal brief, petition for extension of time and a check for \$460 were filed, along with instruction to apply \$250 for the appeal brief fee and \$210 for a 2-month extension of time. There was no authorization to charge a fee deficiency to a deposit account. Since the fee for a 2-month extension of time is \$225, the fee is deficient by \$15. In view of the 1-month extension of time, the application became on January 4, 2007, for a failure to file an appeal brief.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. This is **not** a final agency action within the meaning of 5 U.S.C. § 704.

Under the circumstances of this case, the reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(b)," the \$15 balance of the extension fee submitted on February 6, 2007 and a statement regarding the delay in accordance with 37 CFR 1.137(b).

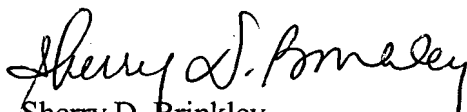
Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop PETITION
 Commissioner for Patents
 Post Office Box 1450
 Alexandria, VA 22313-1450

By hand: U.S. Patent and Trademark Office
 Customer Service Window, Mail Stop PETITION
 Randolph Building
 401 Dulany Street
 Alexandria, VA 22314

The centralized facsimile number is (703) 872-9306.

Any questions concerning this matter may be directed to the undersigned at (571) 272-3204.


Sherry D. Brinkley
Petitions Examiner
Office of Petitions